

## CHAPTER IX LOSS OF USDA FOODS

### SECTION 1 – ITO/STATE AGENCY RESPONSIBILITIES

#### **9100 GENERAL**

The ITO/State agency is responsible for all USDA foods it receives and, therefore, is accountable for any losses that may occur while in storage and during distribution. Instructions for reporting losses of donated foods are contained in FNS Instruction 410-1, Rev. 1, Non-Audit Claims - Food Distribution Program. USDA retains the authority to determine if a loss is due to fault or negligence on the part of the ITO/State agency. If such a determination is made, USDA may pursue a claim against the ITO/State agency for the value of the loss. ITOs/State agencies are responsible for pursuing claims against local agencies (see paragraph 9110, below). However, if the ITO/State agency fails to pursue a claim against a local agency, the ITO/State agency may be held responsible for the claim.

#### **9110 CLAIM DETERMINATIONS FOR USDA FOOD LOSSES**

A claim determination (a determination of fault or negligence) for a food loss must be based on the facts reported (see paragraph 9300, below) and on the other facts known or observed by ITO/State agency personnel. The claim decision must be documented with the reasons for the determination.

- A. **Losses Due to Fraud.** For a food loss that is the result of fraud, regardless of the value or location of the loss, the ITO/State agency must make a tentative claim determination, and submit a written report of the loss to the appropriate FNS Regional Office within 30 days of the discovery of the loss. The report must contain the information indicated in paragraph 9300, below. If the loss occurred at the local agency, the report must also include the ITO's/State agency's recommendation as to whether the local agency is at fault for the loss. The FNS Regional Office is responsible for the further handling of losses that result from fraud and will instruct the ITO/State agency on the disposition of the claim.
- B. **Nonfraud Losses Less than \$100.** For food losses that are not the result of fraud, no claim determination is required if the value of the loss is less than \$100.
- C. **Nonfraud Losses from an ITO/State Agency Warehouse or Distribution Facility.**
  - 1. For a food loss that does not exceed \$250, the ITO/State agency must make the final claim determination and submit a written report of the loss to the appropriate FNS Regional Office within 30 days of the discovery of the loss. The report must contain the information indicated in paragraph 9300, below.
  - 2. For a food loss that exceeds \$250, the ITO/State agency must make a tentative claim determination and submit a written report of the loss to the appropriate FNS Regional Office within 30 days of the discovery of the loss. The report must contain the information indicated in paragraph 9300, below. The FNS Regional Office is responsible for the further handling of the loss and will instruct the ITO/State agency on the disposition of the claim.

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**D. Nonfraud Losses from a Local Agency Warehouse or Distribution Facility.** The ITO/State agency must require that its local agencies report all losses of USDA foods, and must provide a form, acceptable to FNS, for that purpose.

1. For a food loss that is at least \$100, but does not exceed \$2,500, the ITO/State agency must make the final claim determination and submit a written report of the loss to the appropriate FNS Regional Office within 30 days of the discovery of the loss. The report must contain the information indicated in paragraph 9300, below.
2. For a food loss that exceeds \$2,500, the ITO/State agency must make a tentative claim determination and submit a written report of the loss to the appropriate FNS Regional Office within 30 days of the discovery of the loss. The report must contain the information indicated in paragraph 9300, below, and must include the ITO's/State agency's recommendation as to whether the local agency is at fault for the loss. The FNS Regional Office is responsible for the further handling of the loss and will instruct the ITO/State agency on the disposition of the claim.

## **9120 ITO/STATE AGENCY COLLECTION OF CLAIMS FOR USDA FOOD LOSSES**

The ITO/State agency must maintain records on all claims actions, including a claims register, and substantiating documentation, such as purchasing documentation, in accordance with FNS Instruction 410-1.

### **A. Losses from an ITO/State Agency Warehouse or Distribution Facility.**

1. For fraudulent losses (which are forwarded to the appropriate FNS Regional Offices in accordance with paragraph 9110A, above), the ITO/State agency must submit payment for the claim immediately upon receiving instructions from the appropriate FNS Regional Office.
2. For nonfraud losses that are at least \$100, but do not exceed \$250, the ITO/State agency must submit payment for the claim immediately upon finalizing the claim determination (see paragraph 9110C, above).
3. For nonfraud losses that exceed \$250 (which are forwarded to the appropriate FNS Regional Offices in accordance with paragraph 9110C, above), the ITO/State agency must submit payment for the claim immediately upon receiving instructions from the appropriate FNS Regional Office.

### **B. Losses from a Local Agency Warehouse or Distribution Facility.**

1. The ITO/State agency must aggressively pursue collection action on all claims against a local agency. In establishing procedures for the collection of claims against a local agency, the ITO/State agency may either:
  - a. Follow Tribal/State procedures for collecting debts owed to the Tribe/State; or
  - b. Issue two written demand letters at a minimum of 30-day intervals. The letters must include language on the consequences for failure to cooperate.

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2. For fraudulent claims (which are forwarded to the appropriate FNS Regional Offices in accordance with paragraph 9110A, above), the ITO/State agency must pursue collection action immediately upon receiving instructions from the appropriate FNS Regional Office to proceed with the claim.
3. For nonfraud losses that are at least \$100, but do not exceed \$2,500, the ITO/State agency must pursue claim collection immediately upon finalizing the claim determination (see paragraph 9110D, above).
4. For nonfraud losses that exceed \$2,500 (which are forwarded to the appropriate FNS Regional Offices in accordance with paragraph 9110D, above), the ITO/State agency must pursue collection action immediately upon receiving instructions from the appropriate FNS Regional Office to proceed with the claim.
5. If the local agency fails to respond to the ITO's/State agency's collection actions, the ITO/State agency must refer the outstanding claim to the appropriate FNS Regional Office for further action.

**SECTION 2 - LOCAL AGENCY RESPONSIBILITIES**

**9200 LOCAL AGENCY RESPONSIBILITY FOR USDA FOOD LOSSES**

The local agency must receive, store and distribute USDA foods in accordance with applicable provisions in Chapters VI, VII, and VIII, above. The local agency must report all food losses to the ITO/State agency using a form, acceptable to FNS, for that purpose (see paragraph 9110D, above).

### SECTION 3 - LOSS REPORTING REQUIREMENTS

#### **9300 LOSS REPORTING REQUIREMENTS**

All reports of losses of USDA foods must include the following information:

- A. Description and quantity of each lost USDA food;
- B. Package date;
- C. Date of receipt;
- D. Time and place of the loss;
- E. Name of the person(s) having possession of the food at the time of the loss;
- F. Date of the discovery of the loss;
- G. Current inventory on hand of the item found to be out-of-condition;
- H. Apparent cause of the loss;
- I. Description of the condition of the food;
- J. General storage conditions -- i.e., temperature, pallet, sanitation, cool or dry storage, etc.;
- K. Schedule, including dates, of extermination treatments, if applicable;
- L. Precautions against theft or fire, if applicable;
- M. Certificate of inspection by a health official;
- N. Copy of the local fire or police department's report, if applicable;
- O. Manner of disposal of the out-of-condition food; and
- P. Amount of the claim.